

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RITA'S WATER ICE FRANCHISE
COMPANY, LLC

Plaintiff,

v.

S.A. SMITH ENTERPRISES,
LLC, et. al.

Defendants.

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: CIVIL ACTION
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: NO. 10-4297
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ORDER

AND NOW, this 10th day of January 2011, upon consideration of Plaintiff Rita's Water Ice Franchise Company, LLC's Motion for a Preliminary Injunction (Doc. No. 2), Plaintiff's Memorandum of Law and Supplemental Memorandum of Law in Support of the Motion (Doc. Nos. 21 and 7), and Defendants S.A. Smith Enterprises, LLC, Shirley A. Smith, and Jeffrey B. Smith's Memorandum in Opposition to the Motion (Doc. No. 22), and after hearings held on September 8, 2010 and September 10, 2010 and a status conference held on November 23, 2010, it is **ORDERED** as follows:

1. Plaintiff's Motion for a Preliminary Injunction Order (Doc. No. 2) is **GRANTED**;
2. For a period of two (2) years commencing on the date of this Order, Defendants are **ENJOINED** from selling within three (3) miles of the Franchise Territory,¹ products which are the same as, or substantially similar to those products offered by Rita's Water Ice Franchise

¹ The Franchise Territory is defined as a two and one half mile radius surrounding the franchise location, 2080 Timothy Road, Athens, Georgia 30606. (Plaintiff's Exhibit 4 ("Ex. P-4").)

Company, LLC Franchises as directed by paragraph 17.3 of Rita's Water Ice Franchise LLC Franchise Agreement (Plaintiff Exhibit 2 ("Ex. P-2")). This injunction prohibits Defendants S.A. Smith Enterprises, LLC, Shirley A. Smith, and Jeffrey B. Smith from selling soft serve ice cream, Pearly's Italian ice, "Pearlatis," "Pearly's Shakes" and any other product similar to those offered by Rita's Franchises at or within three (3) miles of the Franchise Territory under the name Pearly's Sweet Creative Desserts or any other name;

3. Defendants are **ENJOINED** from using Rita's proprietary batch machines to produce any product for sale that is similar to products offered by Rita's Franchises.

4. The preliminary injunction is effective upon Plaintiff's posting a bond in the amount of \$50,000 in accordance with Fed. R. Civ. P. 65(c).

BY THE COURT:

/s/ Joel H. Slomsky, J.
JOEL H. SLOMSKY, J.